IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL ST.NO.28017 OF 2007

Lakshman Pandurang Patil ...Appellant

vs.

Pandu Bala Patil (deceased)
and others ...Respondents

Mr.V.B.Rajure for the Appellant

CORAM: A.S.OKA,J.
DATE : DECEMBER 12,2007.

P.C.:

1. I have heard the learned Advocate for the Appellant. The Appellant is the unsuccessful original plaintiff. The plaint in the suit filed by the Appellant was rejected by the trial court. The order of rejection of the plaint has been confirmed in the Appeal by the District Court.

2. The Appellant filed a suit, inter alia, contending that the Respondents by practising a fraud obtained a decree in R.C.S. No.1/1995. It must be stated here that against the said decree, Appellant had preferred a Regular Appeal in the District Court which was dismissed in default. The Appellant had applied for restoration of the said Appeal. The said Application was rejected on 10th August 2004 and thereafter the present suit has been filed.

3. The trial court has observed that the Appellant was a

party to the said suit. The trial court observed that only after an application for restoration of the Appeal preferred against the decree in the said suit was dismissed, the present suit was filed. Considering all these aspects, the trial court rejected the plaint.

4. In the Appeal the submission of the Appellant was that by invoking sub rule 2 of Rule 2 of Order II or Rule 11 of Order VII of the Code of Civil Procedure,1908, the plaint could not have been rejected. The Appellate Court observed that in any event issue involved in the suit was directly and substantially involved in the previous suit between the parties and the previous suit has been decided on merits. The Appellate Court observed that the decree passed in the previous suit has been confirmed as the Appeal preferred against the said decree has been dismissed. Therefore, the Appellate Court proceeded to confirm the order of rejection of the plaint.

5. After having heard the learned Advocate for the Appellant and after perusing the impugned Judgments and Orders, I find that no substantial question of law arises. Second Appeal is dismissed with no order as to costs.

JUDGE